



FOR INFORMATIONAL PURPOSES

Contact: (916) 445-4950

Timeline of Lethal Injection Protocol Regulations

Feb. 21, 2006: Condemned inmate Michael Angelo Morales' execution is stayed because of his challenge to California's administration of its lethal injection protocol. Morales challenged the constitutionality of his execution, contending that San Quentin State Prison's operational procedure — the protocol for lethal injection — and the manner in which the California Department of Corrections and Rehabilitation (CDCR) implemented it, would subject him to unnecessary risk of excessive pain, thus violating the Eighth Amendment's prohibition of cruel and unusual punishment.

Dec. 15, 2006: The U.S. District Court held that "California's lethal-injection protocol — as actually administered in practice — create[d] an undue and unnecessary risk that an inmate will suffer pain so extreme that it offends the Eighth Amendment." The Court also stated that "Defendants' implementation of lethal injection is broken, but it can be fixed."

January 16, 2007: The Governor's Office submitted a response to the Court's Dec. 15, 2006 Memorandum of Intended Decision. The Governor immediately directed CDCR to undertake a thorough review of all aspects of its lethal injection protocols. CDCR informed the Court it would undertake a thorough review and submit to the court by May 15, 2007 a revised process.

May 15, 2007: CDCR files a revised protocol with the court.

Nov. 29, 2007: The Marin County Superior Court held that the Administrative Procedure Act required CDCR to promulgate the protocol as a regulation. A lethal injection protocol had been in effect since 1993. No court had required it to be promulgated as a regulation.

Nov. 21, 2008: CDCR's appeal of the Superior Court order was denied.


April 17, 2009: CDCR submitted draft lethal injection regulations to the Office of Administrative Law (OAL).

May 1, 2009: CDCR posted the notice of proposed regulations in the OAL Register and provided public notice on its Internet website. Posted documents included the full regulation text, an initial statement of reasons, forms, a notice of proposed change to regulations identifying the public comment period, public hearing date, location and time, and contact information for submitting comments to the CDCR. CDCR's unique notice requirements also include posting notices of regulations in all state prisons in conspicuous places accessible to inmates. This requirement is met using CDCR's special notice called a Notice of Change to Regulations that was also posted on the CDCR website.

May 1, 2009: The public comment period began.

June 30, 2009: CDCR held a public hearing regarding the proposed regulations. There were 102 speakers at the public hearing. The public hearing was not a forum to debate the proposed regulations.

July 1, 2009: CDCR elected to accept comments until 5 p.m. because of the large volume of last minute comments received.



Jan. 4, 2010: CDCR issued a notice of modifications to the text of the proposed lethal injection regulations. The changes in the re-notice were in response to comments received regarding the originally proposed regulation text. The APA requires that such re-notice comment periods be no less than 15 calendar days.

Jan. 20, 2010: End of the 15-day public comment period. The CDCR decides to accept public comments through January 26, 2010 because of the high volume of last minute comments received electronically by email.

April 29, 2010: CDCR submits final rulemaking package for the lethal injection regulations to the Office of Administrative Law.

June 8, 2010: The OAL notified CDCR that it was disapproving the regulations submitted on April 29. The disapproval contained specific deficiencies that caused the disapproval, but which could be addressed through changes announced in a public re-notice or by further information provided by CDCR.

June 11, 2010: CDCR publishes a second re-notice to the public addressing the issues raised by the OAL. The re-notice public comment period ran for 15 days – from June 11 to June 25 – as required by the Government Code. CDCR accepted and responded to public comments arriving up to June 28.

July 6, 2010: CDCR re-submitted its regulations concerning the lethal injection process. The OAL has up to 30 working days to review the regulation filing.

July 30, 2010: The OAL notified CDCR that it had approved and certified for adoption the regulations for lethal injection. The rulemaking record was filed with the Secretary of State the same day. It will take effect with the force of law in 30 calendar days.

August 29, 2010: The permanent effective date of the regulations.

February 21, 2012: The Marin County Superior Court issued a judgment and held that CDCR failed to comply with the Administrative Procedure Act when it promulgated its lethal injection regulations. The court enjoined CDCR from executing anyone until such time as new lethal injection regulations were promulgated in compliance with the Administrative Procedure Act.

April 26, 2012: CDCR appealed the ruling and injunction to the Court of Appeal for the First District.

April 16, 2013: Oral arguments were held. The Appellate Court had 90 days to issue a ruling.

May 30, 2013: The Court of Appeal for the First District affirmed the trial court's judgment and held that CDCR's lethal injection protocol was invalid for substantial failure to comply with the requirements of the Administrative Procedure Act, and permanently enjoined CDCR from carrying out the execution of any condemned inmate by lethal injection unless and until new regulations are promulgated in compliance with the Administrative Procedure Act.

For capital punishment information, see: http://www.cdcr.ca.gov/Capital_Punishment/index.html

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